

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

4 UNITED STATES OF AMERICA )  
5 vs. )  
6 ) No. 1:15-cr-10300-DPW-5  
7 MARK HARRINGTON, )  
8 Defendant. )

10 BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

## SENTENCING HEARING

21 Brenda K. Hancock, RMR, CRR  
22 Official Court Reporter  
23 John Joseph Moakley United States Courthouse  
One Courthouse Way  
Boston, MA 02210  
(617) 439-3214

1 APPEARANCES:

2  
3 UNITED STATES ATTORNEY'S OFFICE  
4 By: AUSA Lauren Kaplan  
5 AUSA Kristina E. Barclay  
6 John Joseph Moakley Federal Courthouse  
7 1 Courthouse Way  
8 Suite 9200  
9 Boston, MA 02210  
On behalf of the Plaintiff.

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12 ROBERT M. GOLDSTEIN, ESQ.  
13 20 Park Plaza, Suite 1000  
14 Boston, MA 02116  
15 On behalf of the Defendant.

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1 (The following proceedings were held in open court  
2 before the Honorable Douglas P. Woodlock, United States  
3 District Judge, United States District Court, District of  
4 Massachusetts, at the John J. Moakley United States Courthouse,  
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on  
6 Thursday, December 15, 2016):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 2:05 p.m.)

25 One of the issues that is raised with a (C) plea is

1 that there are some limitations on what the parties can argue.  
2 They have made an agreement, and it is an argument that is in  
3 the shadow of United States v. Canada in the First Circuit,  
4 which places additional restrictions on the United States on  
5 what it can argue and how it can respond without running the  
6 risk of going beyond its agreement. So, as a consequence, I am  
7 left with a circumstance in which I am not always certain that  
8 I have all of the information that I think is necessary. It  
9 may be, it may not be, that the agreement of the parties is an  
10 accurate one, one that I am prepared to accept.

11 The second aspect of this is, as we discussed earlier  
12 this week, there are some legal issues that surround this case.  
13 The legal issues I think are ones that do not proscribe a pure  
14 economic-harm extortion, as I indicated. Nevertheless, there  
15 are two tiers. One would be pure economic harm; the second  
16 would be economic harm that is associated in some fashion with  
17 threats.

18 Here I am presented with a position that is taken by  
19 the Government that this is one case that must be dealt with in  
20 terms of the guidelines as economic harm associated with  
21 threats. That is why we are dealing here with a guideline  
22 dispute. The defendant claims, no, this is pure economic harm,  
23 and that is part of the dispute that is in the objections to  
24 the Presentence Report.

25 I outline all of this to indicate that, merely because

1 there is an agreement between the parties, I am not necessarily  
2 bound by it. My experience has been that in a relatively large  
3 number of cases -- I have not tracked it -- but in a relatively  
4 large number of cases I reject these pleas, (C) pleas. And so,  
5 I want it to be clear for the parties, as I say, what the terms  
6 of the engagement are. It can mean several things. It can  
7 mean I view the sentence as being unreasonable under any set of  
8 circumstances. I do not think that is the case here. It can  
9 also mean that I am not in a position to say what the  
10 circumstances are, and I am not going to apply my signature to  
11 the judgment until I have a better degree of certainty  
12 regarding that.

13 The whole question of plea agreements is a yeasty one.  
14 It is one that in other jurisdictions, in particular, that have  
15 more onerous dockets, criminal dockets than this court does,  
16 raises questions of whether the role of the Court is to be a  
17 processor of agreements between the parties or it has an  
18 independent judgment. They are ready to face that issue  
19 because of the nature and size of the docket. But this is not  
20 a processing court. I am going to exercise independent  
21 judgment with respect to that, and that independent judgment  
22 may mean that at this point I cannot accept the plea.

23 I outline it so that the parties can speak to me  
24 regarding it. I do not want you to be blind-sided about the  
25 way in which I am going to be approaching it, but I think what

1 you have to do is convince me that I am in a position now to  
2 know enough about the involvement of this defendant in the  
3 relevant conduct here, because I am dealing with relevant  
4 conduct, not merely the charging decision that the Government  
5 has made. There has been a charge bargain as well in this,  
6 which is legitimate. It takes the conspiracy charge out, but  
7 under the guidelines I have to make a responsible judgment  
8 about what I call "vicarious liability," but conspiracy, and it  
9 is against a lower standard than would be applied in a criminal  
10 case.

11 So, what I propose to do is work my way through the  
12 Presentence Report. I have, of course, the Sentencing  
13 Memorandum that was filed on behalf of Mr. Harrington and the  
14 attached collection of letters; I have a more recent  
15 supplemental letter by Mr. Harrington; and I have the  
16 Government's Sentencing Memorandum as well. I think those are  
17 all the written materials, apart from the Presentence Report  
18 that I should have. Is that right?

19 MS. KAPLAN: I believe so, your Honor.

20 MR. GOLDSTEIN: That's correct, your Honor.

21 THE COURT: So, let's turn to the Presentence Report.

22 Two things, I guess, are at issue, that defendant has  
23 put at issue. The first is a question of loss, at least  
24 chronologically in the objections, the question of the amount  
25 of loss; and the second is which of two potential guidelines

1 could apply in these circumstances.

2                   Here is the conundrum for me, and maybe,  
3 Mr. Goldstein, you can address it. One could look at this as a  
4 case in which Mr. Harrington simply happened to be present when  
5 others were making threatening remarks, but he is also a union  
6 official, and he has some responsibility at a site for the  
7 conduct of union members in pursuing their goals.

8                   Viewing it from a prospect or perspective of the kinds  
9 of considerations for guidelines that I must have in mind for  
10 Section 1B1.3, how can I not say that at least it is an open  
11 question about whether or not he was part of jointly  
12 undertaking criminal activity that was within the scope of a  
13 jointly undertaken choice that was in furtherance of that  
14 criminal activity, and that the threats, which at least on what  
15 I now know not made by him but made by others, were reasonably  
16 foreseeable in connection with that criminal activity? Putting  
17 to one side whether I can say that now one way or the other, I  
18 am left, I think, with this view that I need to know more. How  
19 do you ordinarily know more? Well, we have a trial. Mr.  
20 Harrington could choose to participate in the trial or not  
21 choose to participate in the trial, but getting a (C) plea  
22 resolution of it is something that puts me in the posture of  
23 not being able to make that kind of determination.

24                   So, having said that, it is teed up by which of the  
25 guidelines is involved and how much loss is involved, less for

1 loss depending on the guidelines. So, perhaps, Mr. Goldstein,  
2 you want to speak to that.

3 I note that the Government in its position reflected  
4 in the Plea Agreement has taken a position that this is a  
5 guideline of 2B3.2, which is associated with threats. So,  
6 the Government has a different view, and certainly Probation  
7 has a different view.

8 MR. GOLDSTEIN: They do, your Honor. So, let me --  
9 can I back up? I will answer your question.

10 THE COURT: Sure, absolutely.

11 MR. GOLDSTEIN: To back up just a second, your Honor  
12 had made an observation at the hearing earlier this week in  
13 terms of a (C) plea and the parties, I'm paraphrasing, not  
14 really wanting the Court's judgment in terms of making a (C)  
15 plea. That may be a --

16 THE COURT: Well, they are foreclosing it. Whether  
17 they want it or not, although I suspect that they do not, that  
18 is why they enter into a (C) plea; that they are not going to  
19 leave it to the independent judgment of the judge; they are  
20 going to say to the judge, "Here, take it or leave it." That  
21 is what a (C) plea is.

22 Now, the way I analyze that, customarily analyze it  
23 is, is this in the realm of reasonableness to me? And I have,  
24 I think, greater leeway than I might otherwise in my own mind  
25 of deferring to the parties. But it is not total or even

1       substantial deference. It is a recognition the parties know  
2       their case. They also have various strategic, tactical,  
3       resource-related choices that they make, but those are not my  
4       choices. My responsibility is to impose a sentence that fairly  
5       reflects the culpability of the defendant, and if I do not know  
6       enough to be able to make that choice, even if the parties have  
7       already made that choice, then I simply reject the (C) plea.  
8       That does not mean that I do not at the end of the day end up  
9       where the (C) plea is, but it does mean that, at least in that  
10      sense, I need more.

11           Now, sometimes a (C) plea is presented to me that  
12      there is no way in God's green Earth that I am going to do  
13      that. This one does not quite follow that category. I can  
14      perceive circumstances developing that I would adopt and  
15      embrace that would make this not unreasonable, I will put it  
16      that way, to illustrate that it is not my ultimate choice here.  
17      I can say in candor, because I want a candid discussion, I view  
18      it as a very humane recommendation on the part of the  
19      Government here, but I cannot adopt it, I think, properly, or,  
20      in any event, I am not going to adopt it until I am satisfied  
21      that I know enough about the circumstances to be able to say  
22      that here are the facts that constitute relevant conduct by  
23      this defendant, and, consequently, this is where I would come  
24      to rest on it.

25           MR. GOLDSTEIN: My only point in going backwards to

1 that point, your Honor, was just to make the observation that  
2 it's not my intention, certainly, as the advocate, to deprive  
3 the Court of its judgment. The purpose, from my perspective,  
4 in terms of trying to reach a (C) agreement with the Government  
5 is so that my client, in the context of waiving important trial  
6 rights, understands what the potential result will be. But  
7 it's only -- I'm only seeking the Court's considered judgment  
8 as to whether or not our recommendation to the Court fits your  
9 Honor's ultimate view of the case.

10 THE COURT: And I credit that, and I do not disagree  
11 with it. As I said, this is in a range that there are  
12 conceivable circumstances in which I would embrace it or adopt  
13 it or use it. There are some (C) pleas, this is not that one,  
14 in which I think the parties just would prefer not to have the  
15 judge make the determination for reasons of avoiding  
16 confronting the circumstances of the case for whatever reason.

17 In any event, we all have our different  
18 responsibilities. My responsibility is to ultimately sign the  
19 judgment, and I do not sign judgments until I am ready to say I  
20 endorse this view of the calibration of culpability.

21 MR. GOLDSTEIN: And in that light, your Honor, there  
22 are no facts that I want the Court to not have in this case.  
23 I'm not going to raise any objections to the Government  
24 answering whatever questions your Honor has in terms of the  
25 facts. There will be no Canada challenge. And so, there are

1 no facts, from my perspective, that the Court can't have in  
2 this case to consider and evaluate both Mr. Harrington's plea  
3 and the ultimate sentence issued in this case.

4 From our perspective, the facts are fairly  
5 straightforward in terms of Mr. Harrington's role in this  
6 event, and I don't need to rehash what's in my objections and  
7 in the Sentencing Memorandum. I know your Honor has carefully  
8 read those materials.

9 But Mr. Harrington was recovering from heart surgery  
10 that occurred on April 4th of 2014. He was working a limited  
11 schedule during the relevant events of this case, which are, in  
12 my understanding, early June of 2014. He had a series of  
13 telephone calls with the producer of *Top Chef*. My  
14 understanding is that during every one of those phone calls he  
15 comported himself in a professional manner.

16 Carrying forward to June 9th and June 10th, there was  
17 a series of phone calls between Sean O'Brien, the President of  
18 the Teamsters, or at least one call, and the producer. After  
19 that telephone conversation, during which they were talking  
20 about negotiating a Collective Bargaining Agreement,  
21 Mr. O'Brien forwarded a copy of the Teamsters' template  
22 Collective Bargaining Agreement via email to the producer that  
23 evening. She responded with a "Thank you" email.

24 The next morning, June 10th, Mr. Harrington got up  
25 very early that morning to head in to work. Candidly, part of

1       the object of that day was whether or not *Top Chef* would be  
2       filming at the Omni Parker House that morning. They weren't.

3           When he was driving home that day from work he  
4       received a phone call at approximately 9:42 a.m. that *Top Chef*  
5       had relocated to the Milton restaurant. He went over to the  
6       Milton restaurant. He did not arrive there at the same time as  
7       the other individuals who have been charged in this case, your  
8       Honor, and it's my understanding that during that 90-or-so  
9       minutes Mr. Harrington was present at the Steel & Rye  
10      restaurant he was -- first thing he did was speak to the  
11      producer, in my understanding in a professional manner, to ask  
12      whether or not *Top Chef* would be signing the Collective  
13      Bargaining Agreement. He found out they weren't. He told them  
14      that in that case they would, then, be picketing.

15           The picketing activity, as far as Mr. Harrington was  
16       concerned, was not entering the property of Steel & Rye, but  
17       staying on the sidewalk, which was consistent with  
18       conversations he had with the two Milton Police Officers who  
19       were present during the entire time that Mr. Harrington was  
20       there, which was that the Teamsters had to stay off of the  
21       property of Steel & Rye, they had to stay on the sidewalk, that  
22       they could lawfully -- or not lawfully -- but the Police  
23       Officers told them that they could walk in a circle in front of  
24       cars entering or exiting for a period of time; then they had to  
25       move so the cars would enter.

1           It's my understanding that Mr. Harrington had  
2 instructed the other defendants they were not permitted to go  
3 into the property of Steel & Rye, that when the so-called  
4 lockstep incident supposedly happened, Mr. Harrington did not  
5 see it. There's a big area, your Honor, in terms of the Steel  
6 & Rye, and my understanding is that when they arrived at a  
7 different time they may have gone into the parking lot.

8 Mr. Harrington wasn't a participant to that, didn't observe it.

9           And so his role, what the Government calls to be  
10 "lesser conduct" I view as limited conduct, is he arrives and  
11 he in my estimation or my understanding, your Honor, he is the  
12 gentleman who is trying to pacify the event, meaning, he is  
13 trying to make sure that the others comport with what their  
14 directions are of the two Milton Police Officers who were  
15 present during that day.

16           THE COURT: Is there any question that on the state of  
17 this record, however, using your characterization, that the  
18 other defendants engaged in activity that could be viewed as  
19 threatening in the presence of Mr. Harrington?

20           MR. GOLDSTEIN: I'd like to speak to my client.

21           THE COURT: Sure.

22           MR. GOLDSTEIN: May I have a moment, your Honor?

23           THE COURT: Yes.

24           (Atty. Goldstein conferred with the defendant off the record)

25           MR. GOLDSTEIN: So, in terms of the conduct that's

1 involved in this case, I think it would be consistent with the  
2 Court's characterization. There is what I would call the  
3 "security guard incident," where one, two or three of the  
4 charged defendants walked up to what's described to be an  
5 elderly security guard. Mr. Harrington didn't witness any of  
6 that, wasn't a participant of that. The chest-bumping and  
7 things of that nature, my understanding is that he did observe  
8 different participants, meaning -- it wasn't such a one-sided  
9 event, your Honor. There were members of the *Top Chef*  
10 employment who were engaging the Teamsters at an equal -- at  
11 least at an equal level of agitation. And so, Mr. Harrington  
12 did observe some chest-bumping or things of that nature between  
13 the two sides. So, there is that component to it.

14 THE COURT: And as to Mr. Fidler's comments?

15 MR. GOLDSTEIN: He did not witness any of that or hear  
16 it or understand that it --

17 THE COURT: So, let me understand from the Government,  
18 is there any dispute about that characterization of  
19 Mr. Harrington's presence when these events took place? Of  
20 course, the next question I am going to ask, and I will ask it  
21 of Mr. Goldstein first, but what is his responsibility here?  
22 Not to turn part of Mr. Goldstein's argument on Mr. Goldstein,  
23 but the earlier development of the argument was he was  
24 exercising the authority of an adult dealing with childish  
25 activity. "Childish" understates it. That suggests that he

1 gets the benefit of exercising responsibility, but also he gets  
2 charged with failure to exercise the responsibility, charged in  
3 the sense of, reading this, say he did not take any steps or  
4 sufficient steps to stop them from engaging in this.

5 But, Ms. Kaplan, just on the factual circumstances of  
6 Mr. Harrington's presence during the course of these kinds of  
7 activities.

8 MS. KAPLAN: I think, your Honor, that this is a  
9 little bit different than that he was the responsible grownup  
10 there and he should have done something else.

11 THE COURT: I will get to that in a moment, but I just  
12 want to understand the factual circumstances of what happened  
13 in his presence that could be considered to be threatening.  
14 And part of this is also the Government has taken a position  
15 with respect to what the guideline is, which is that there was  
16 threats of violence involved.

17 MS. KAPLAN: Right. So, there are things that  
18 happened before he even gets there, but we can talk about that  
19 afterwards. But what happens while he's there -- there's a  
20 video, and your Honor --

21 THE COURT: I'm sorry?

22 MS. KAPLAN: There's a videotape, and your Honor can  
23 watch it, and you see Mr. Harrington circling around with his  
24 co-defendants as one of them is looking directly at the  
25 production assistant and cracking his one fist into his other

1 (indicating), calling them names.

2 Now, Mr. Goldstein and I have talked about this.

3 Mr. Goldstein contends that the defendant came upon that  
4 afterwards, but you do clearly see Mr. Harrington in that  
5 videotape in the circle along with these other defendants who  
6 were making their disparaging remarks, calling the production  
7 assistant a "towel head" and other such names.

8 It is a big place. I don't think that the Government  
9 does have a witness who is going to say that Mr. Harrington  
10 saw, for instance, the chest-bumping incident, but the  
11 Government's position is that it was reasonably foreseeable  
12 that things like this would happen. There were conversations  
13 prior to Mr. Harrington arriving there between himself and the  
14 co-defendants. There were conversations he had the day before  
15 with the production assistant, and I would not --

16 THE COURT: With respect to the confrontations between  
17 Mr. Harrington and the co-defendants, apart from having  
18 conversations at that time that presumably deal with what the  
19 activity is going to be, is there anything that is inculpating  
20 in those conversations that you are aware of?

21 MS. KAPLAN: No, and we don't know what took place.  
22 We just have toll records that show that Mr. Harrington did  
23 speak to several of the different defendants. I would not  
24 characterize the exchange that Mr. Harrington had with the  
25 production assistants as necessarily polite, and they were also

1 interspersed the day before with his co-defendant Redmond  
2 threatening that he was going to shut the event down. So,  
3 there's Redmond talking to the production assistant. They put  
4 Harrington on the line. Maybe he's not raising his voice,  
5 maybe he's not saying, "We're going to shut you down," but I  
6 think, given the fact that this is going on simultaneously, it  
7 was reasonable to expect that the production assistant would  
8 have an understanding that there was going to be some sort of  
9 trouble. And, in fact, the night before there was a Teamster  
10 who showed up in Woburn who said, "You know, we know where  
11 you're filming tomorrow, and there is going to be trouble  
12 tomorrow." So, I can't tell your Honor that --

13 THE COURT: I want to hold off on the Woburn, because  
14 that goes to question of loss that has been raised here.

15 MS. KAPLAN: Yes.

16 THE COURT: But, apart from the association evidenced  
17 by telephone calls and so on between Mr. Harrington and the  
18 co-defendants and his presence during the activities on  
19 June 10th, is there any other, I will call it "direct evidence"  
20 -- that is not meant to be a loaded term but simply to suggest  
21 something other than circumstantial evidence -- of  
22 Mr. Harrington's either willful blindness to what is going on  
23 or participation in it?

24 MS. KAPLAN: Well, I think the other thing is, when he  
25 is walking around in this circle he is videotaping. He's

1 taking out his cellphone and he's videotaping the production  
2 crew also, which I think was his own way of intimidating the  
3 crew as well.

4 And my understanding from my conversations with  
5 Mr. Goldstein was that Mr. Harrington did have some knowledge  
6 that some food-delivery trucks were being stopped and prevented  
7 from entering, as well as some guests and some of the  
8 celebrities were being prevented from entering.

9 THE COURT: But not the circumstances under which they  
10 were being confronted?

11 MS. KAPLAN: I'm sorry?

12 THE COURT: The circumstances in which they were being  
13 confronted. I have in mind Mr. Fidler's alleged comments here.

14 MS. KAPLAN: Yes, yes.

15 THE COURT: All right. So, I guess where I am on this  
16 is context is everything. Trying to understand exactly what  
17 the role was is everything. I was, of course, aware of the  
18 video. You offered to provide it to me. I chose not to look  
19 at it until we had this conversation. It is part of the  
20 evidence in the case, but it has to be put in some sort of  
21 context, I think, for me to meaningfully say alternatively what  
22 was going on here. There is no suggestion, I do not think, the  
23 Government is not taking the position, that there is direct  
24 threat of violence by Mr. Harrington, but there are facts and  
25 circumstances which I guess led them to where they are on the

1 guideline, the choice of the guideline, to suggest that he was  
2 involved here and aware of it.

3 Now, does that take him to 1B1.3? Not quite, because  
4 he has got to embrace the agreement there, but I am not sure I  
5 can decide that. The best thing I can say is I am not sure I  
6 can decide that at this point, the facts and circumstances, if  
7 I were required to make a judgment. And the reason I am saying  
8 that in a tentative sort of way is, if I do not accept the plea  
9 I do not want to be understood to have taken a position on any  
10 of these things. What I am saying is I do not know. But if I  
11 were required to take a position, I would say there is reason  
12 to believe that Mr. Harrington, while not having direct  
13 responsibility for the threats themselves, had involved himself  
14 and hierarchically a responsibility in this area for those who  
15 engaged in such threats himself.

16 In short, it seems to me that the choice here to apply  
17 2B3.2 is a fair one on the part of the Probation Office, and so  
18 I am going to reject that objection to it in calculating the  
19 guideline before I get to the larger question of whether I can  
20 accept the proposed plea.

21 Then we go to the question -- I think the next  
22 question is the question of loss. It is perhaps more  
23 meaningful if a different guideline, basic guideline, had been  
24 chosen, but it is still meaningful here, and I want to be sure  
25 I understand what is going on here. There is in the objection

1 reference to other services that seem to be parallel, like the  
2 provision of government services in Cambridge and Rockport not  
3 included in the loss, and similarly Groton as well, I guess. I  
4 am not sure I understand it all. I know that the Government is  
5 looking for Woburn, and that is challenged, and also for RSIG,  
6 and that is challenged.

7 So, first, what is the Cambridge/Rockport/Groton  
8 stuff, and why isn't it being pursued?

9 MS. KAPLAN: Nothing. I think that that was just  
10 included in the paperwork that we received from the victim  
11 company. That had nothing to do with added security in  
12 connection with these events.

13 THE COURT: So, as I understand the Government's  
14 position on this, it is that, faced with the prospect of  
15 attention by the Teamsters on various sites going forward, that  
16 they took reasonable steps to protect themselves --

17 MS. KAPLAN: Yes.

18 THE COURT: -- and those steps ought to be reimbursed.

19 Now, there is also a suggestion that I think  
20 Mr. Goldstein made that some of this is pre-June 9. I am not  
21 sure if that is your contention entirely here, and I am not  
22 sure I want to get into accounting yet, unless I have to.

23 MR. GOLDSTEIN: There are a couple of entries, I  
24 think, in the records that predated June --

25 THE COURT: Would they take it under \$20,000?

1                   MR. GOLDSTEIN: The point is, your Honor, you have  
2 already embraced a more global view of Mr. Harrington's  
3 relevant conduct, and I think in that context --

4                   THE COURT: Potentially.

5                   MR. GOLDSTEIN: Potentially. I think in that context  
6 that the objection to loss is not one well made to the Court,  
7 given its tentative view in terms of --

8                   THE COURT: Well, it will make a difference of one  
9 point on this guideline. Looking at it, it seems to me that  
10 this was consequential and, consequently, appropriately to be  
11 included in loss. It may be, if it became material, something  
12 to which a scalpel should be applied, and that scalpel might  
13 cut off enough to take it one point down here. But I am  
14 generally of the view that this has been consequential loss.

15                  Now, if somebody comes in from *Top Chef* and says, "We  
16 just thought we would have this included here, it did not make  
17 any difference what the Teamsters were doing one way or the  
18 other," that would be different, but I do not think that is the  
19 case in this.

20                  So, I think I have dealt with all of the potential  
21 objections to the guidelines, unless there is something else  
22 that you wanted to raise here. Of course, I have read the  
23 alternative reading of the circumstances, but are there any  
24 other guideline questions that you want me to deal with?

25                  MR. GOLDSTEIN: I think inclusive in the 2B3.2 is the

1 plus two points for the express or implied threat of bodily  
2 injury. I take it the Court has included that within its prior  
3 resolution of which guidelines apply.

4 THE COURT: It seems to me that there is sufficient  
5 evidence in here, and that is why I am saying I cannot decide.  
6 But there is sufficient evidence in here for one to conclude  
7 reasonably that Mr. Harrington could be charged vicariously  
8 under 1B1.3 with involvement in this, whether he, himself,  
9 engaged in the threats themselves. There were threats, at  
10 least on the record here, although, as I understand it from the  
11 Government, it is not taking the position that he was the  
12 voice, the specific voice of that threat, of any of those  
13 threats.

14 So, having gone through that, I think we have then  
15 come to a total Offense Level of 18, a Criminal History  
16 Category of I, the guideline range under these circumstances is  
17 27 to 33 months in prison, supervised release of 1 to 3 years,  
18 a fine range of \$6,000 to \$60,000, restitution of \$24,023.95,  
19 and a Special Assessment of \$100.

20 Are we dealing with the same set of numbers based on  
21 that set of calculations?

22 MR. GOLDSTEIN: Yes, your Honor.

23 THE COURT: So, I guess, then, Ms. Kaplan, I want to  
24 hear whatever additionally you would like to say about the  
25 recommendation that you make here.

1                   MS. KAPLAN: Thank you, your Honor. The Government  
2 understands, your Honor, that the Court must look at the  
3 sentencing factors under 3553(a) in fashioning a sentence which  
4 is sufficient but not greater than necessary to comply with the  
5 purposes of the *Sentencing Guidelines*. And although your Honor  
6 has calculated we think appropriately the *Sentencing Guidelines*  
7 of 27 to 33 months' incarceration, the Government and the  
8 defendant have agreed to a sentence of 2 years' probation with  
9 6 months of home confinement, and we believe that this is  
10 sufficient but not greater than necessary to comply with the  
11 purpose of the *Sentencing Guidelines*.

12                   We recognize that this is a departure from the  
13 guidelines, and I am prepared to explain our reasoning, some of  
14 which I think that you have heard already.

15                   Looking at the nature and the circumstances of the  
16 particular offense here, there's no question that the crime of  
17 extortion is a serious one, and there's no question that the  
18 defendant participated in the conduct that was intended to  
19 cause harm, as he has admitted, to the crew of *Top Chef* filming  
20 in Boston and elsewhere in June of 2014.

21                   What makes the conduct in this particular case  
22 criminal is not the defendant's claim that they were picketing,  
23 which the Government does not even believe that they were  
24 doing; but, rather, the crime here was the threats, whether  
25 they were economic, of an economic nature or of a physical

1       nature, and the activity which was specifically designed to  
2       disrupt the business of *Top Chef* on the day of the shooting,  
3       just as the celebrity hosts and the guests were arriving and  
4       just as the work was already in the process of being done, and  
5       they were doing this to obtain an illegitimate labor objective,  
6       which was union scale wages and benefits for jobs that were  
7       unwanted, unnecessary and superfluous.

8           So, the crime was not the gathering by Mr. Harrington  
9       and the defendants to protest *Top Chef* having hired a nonunion  
10       crew, but it was, rather, as your Honor alluded to the other  
11       day, threats to shut down the event by blocking the deliveries  
12       of food and the cars and the guests to the show and the  
13       celebrities by the name-calling of racist and homophobic slurs,  
14       the threats of physical harm to the crew and the celebrity  
15       guests. There was chest-bumping, there was pushing, there was  
16       shoving to the extent of one crew member was pushed to the  
17       floor, and there was other physical harm.

18           If this were really just picketing or organizing, your  
19       Honor, we would not be here, the Government would not have  
20       involved itself in this case. There was no leafletting, there  
21       was no effort to organize the crew, and there was no approval  
22       by the union for even a picket on that day.

23           However, when we looked at this particular  
24       defendant --

25           THE COURT: Can I just pause for a moment, just so I

1 understand that? As to the collective-bargaining-based  
2 information, as I understand it and Mr. Goldstein characterized  
3 it, the initial encounter with the producer resulted in  
4 Mr. Harrington sending a copy of the CBA to the producer, and  
5 Mr. Goldstein, if I heard it correctly, said that was  
6 undertaken as an effort to see if they will sign onto it.

7 The second part of it, I guess, is that you said it  
8 was not authorized by the union, and I do not know what  
9 "authorization" means. Does Mr. O'Brien have to sign off on  
10 it? Does somebody else have to sign off on it? Can  
11 Mr. Harrington in his position sign off on it? What does it  
12 mean to say a picket is not authorized? What formalities are  
13 necessary, if any?

14 MS. KAPLAN: So, with respect to your first question,  
15 the evidence will be that at no time was this company going to  
16 sign a Collective Bargaining Agreement with the Teamsters.  
17 That was never going to happen.

18 THE COURT: And just to get to the point that I want  
19 to get to, and I will hear anything else you want to say, but  
20 were they solicited to sign off on the CBA by Mr. Harrington or  
21 someone acting in concert with him?

22 MS. KAPLAN: So, what had happened was the person, the  
23 individual that Mr. Harrington was talking to was a  
24 production -- she was a production assistant -- a line  
25 producer. She was not authorized to enter into an agreement

1 with the Teamsters. She was reporting to other people. And  
2 the extent of her authorization was that she was permitted to  
3 set up a meeting with Mr. Harrington and Mr. O'Brien, a meeting  
4 that she did schedule. I believe it was supposed to be a  
5 telephone, conference call. After that meeting was scheduled,  
6 it was either Mr. Harrington or Mr. O'Brien who emailed a  
7 Collective Bargaining Agreement. Now, this was a Collective  
8 Bargaining Agreement for the motion-picture industry. It's a  
9 Collective Bargaining Agreement that this company has never  
10 been a party to. So, it's just a Collective Bargaining  
11 Agreement that you can sign onto if you wish, but *Top Chef*, NBC  
12 have never been a party to that agreement.

13 THE COURT: I just want to understand it a bit more.  
14 The line producer, if that is the proper term, but a  
15 sub-numerary, I guess I would say there, becomes the contact.

16 MS. KAPLAN: Yes.

17 THE COURT: But can it fairly be said that, while the  
18 prospects of them signing onto the CBA are very low, at least  
19 there was an effort to provide or solicit their signature on  
20 the CBA, and is there anything wrong with the formalities of  
21 that? Is Mr. Harrington in a position to say, "We would like  
22 you to join"? Does he need somebody else's approval to do  
23 that? Does Mr. O'Brien need that?

24 And I would add, to provide some context, Mr. O'Brien  
25 is not a defendant in the case. I assume that that is because

1 he was not present on June 10th. Is that a defining feature,  
2 distinguishing feature for him?

3 MS. KAPLAN: That is one of the reasons, and the other  
4 reason will be my answer to your second question.

5 THE COURT: Okay.

6 MS. KAPLAN: There's no question that they sent a  
7 Collective Bargaining Agreement, but they also then canceled  
8 the meeting. So, it's the Government's view that they -- you  
9 know, they canceled the meeting, and when asked why, they said,  
10 "Because we don't think you're taking this seriously."

11 In addition, Mr. Harrington told the same line  
12 producer, "Look, we have no interest in *Top Chef*. All we want  
13 is for you to hire a few people." So, it was made clear to  
14 them that they didn't want to organize, they didn't want a  
15 Collective Bargaining Agreement, they just wanted a few people  
16 hired for the job. So, that's why I say this wasn't -- you  
17 know, they emailed the Collective Bargaining Agreement, but on  
18 neither side was there an intention to sign a Collective  
19 Bargaining Agreement.

20 With respect to your second question about the  
21 picketing, Mr. O'Brien after the incident in Milton went into  
22 the Milton Police Department with his attorney and disavowed  
23 any -- he said that this union -- these people were rogue  
24 members of this union who were not authorized to engage in a  
25 picket. His attorney also called an attorney for the victim

1 company the day that this happened in Milton or the day after  
2 and said, "Well, the union had nothing to do with this. We'll  
3 make sure they don't come back tomorrow."

4 And there's additional evidence, your Honor, that this  
5 was not an authorized picket. And what I mean by that is, when  
6 there's going to be a picket, first of all, there are rules and  
7 regulations that you have to abide by when you go to picket.  
8 You can't block sidewalks and various other things. We have  
9 instructions that the Teamsters issue, written instructions, on  
10 how you have to conduct yourself.

11 In addition, there's a signup sheet, and that's at the  
12 union Hall, and you sign up to go to the picket.

13 THE COURT: Who gets to say in the union, as you  
14 understand it, "We are going to picket?" Is it Mr. O'Brien --

15 MS. KAPLAN: Yes.

16 THE COURT: -- under these circumstances?

17 MS. KAPLAN: Yes, yes.

18 THE COURT: All right. I'm sorry I interrupted, but I  
19 wanted to get a broader sense of this.

20 MS. KAPLAN: That's okay. So, with respect to the  
21 departure from the guidelines here, there is no evidence that  
22 this defendant, unlike his co-defendants, engaged in physical  
23 violence or the threats of physical violence. He was, however,  
24 as your Honor pointed out, the only union official present in  
25 Milton. He did nothing to prevent threatening conduct. As I

1       said, he was seen on the videotape circling with the crew, and  
2       he set up the meeting and he had these phone calls.

3           We believe that the sentence, your Honor, will promote  
4       respect for the law. We believe that this prosecution has  
5       already sent a message that this type of conduct will not be  
6       tolerated. We believe that in terms of specific deterrence for  
7       this defendant he has lost his position with the union, and as  
8       a result of this conviction he is going to receive a bar letter  
9       from the Department of Labor, and what that will do is  
10       essentially prohibit him from holding office with any union for  
11       a certain period of time, but it's a fairly significant period  
12       of time. So, essentially this prosecution has taken away his  
13       livelihood, and we took that into account when fashioning a  
14       sentence for the defendant. We believe that, as far as general  
15       deterrence goes, the message has been sent that the Government  
16       will not tolerate this type of behavior by Unions.

17           So, largely, your Honor, it is due to Mr. Harrington's  
18       role in the offense, which we could clearly see was different  
19       than the role of his co-defendants, which led us to believe  
20       that a sentence of probation with 6 months of home arrest was  
21       sufficient but not greater than necessary to comply with the  
22       *Sentencing Guidelines*.

23           THE COURT: Let me ask you a disparity question, I  
24       suppose. It arises out of Judge Casper's case, and I am trying  
25       to remember the name of the defendant, but it was

1 a-year-and-a-day sentence.

2 MS. KAPLAN: James Deamicis.

3 THE COURT: Right. How does this compare with that,  
4 and why should I distinguish this from that case, if you think  
5 I should? You may say that you did not think that was the  
6 right sentence either.

7 MS. KAPLAN: I did not think that was the right  
8 sentence either, however, I do think it's distinguishable.  
9 James Deamicis was known as "Jimmy the Bull," and in that case  
10 there was testimony by multiple victims that he had put them --  
11 that they were fearful of him, and he had gone to these victim  
12 companies and basically was demanding money for himself and his  
13 family and his friends or threatening that he would shut the --

14 THE COURT: But if I understand it correctly, the way  
15 in which Judge Casper was characterizing it was threat of  
16 economic harm, not physical threats. Now, it may be that his  
17 Homeric epithet, "The Bull," and his demeanor would be  
18 off-putting to people, but that is not the way she was  
19 characterizing it, as I understand it. She was saying this is  
20 a threat of economic harm. He did not say he was going to  
21 break somebody's pretty little face in or anything like that  
22 and did not engage in belly-bumping or chest-bumping, I guess  
23 it would be here.

24 MS. KAPLAN: Well, she sat through six weeks of a  
25 trial that involved -- two trials that involved an awful lot of

1 relevant conduct about threats of violence. There was no  
2 actual physical --

3 THE COURT: But that was her characterization.

4 MS. KAPLAN: Okay.

5 THE COURT: What I am trying to tease out, I think, is  
6 a view that might be that the Guideline 2B3.2 encompasses a lot  
7 of stuff in which there may be violence in the air but the  
8 individual defendant is not involved directly or appreciably  
9 indirectly in it himself, and she did not find the guidelines  
10 at either end to be meaningful, and so she moved it back down.

11 MS. KAPLAN: Well, I think it was in comparison to the  
12 other defendants as well. But I think that part of the  
13 difference was that there were multiple victim companies in  
14 that case, and it was Mr. Deamicis alone on some occasions that  
15 went and made these direct threats of economic harm. So, in  
16 this case we don't have the defendant making direct threats of  
17 economic harm. We only have one victim. So, I think that  
18 that's part of how it's distinguishable.

19 THE COURT: All right. Now let me express a  
20 concern -- over the years it has proven to be well-founded in  
21 some cases -- which is someone pleads to a (C) plea for modest  
22 involvement before the trial and then appears at trial and  
23 offers testimony that is inconsistent with that, and that goes  
24 to the question of talking about Mr. Deamicis being -- Judge  
25 Casper having the benefit of two trials and you say six weeks

1 of trial, a lengthy period of time. I do not have that here,  
2 and so what is the basis for my believing that I know enough,  
3 would be the basis for me believing I know enough about  
4 Mr. Harrington's involvement to foreclose a different set of  
5 characterizations here? I am putting to one side whether or  
6 not he testifies or not testifies, but that this  
7 characterization is not one that would be challenged, say, by  
8 one of the co-defendants who says, "I am not responsible.  
9 Those telephone conversations I had with Mr. Harrington, they  
10 included instructions to me," or, "Here is how the union wants  
11 you to handle it," or, "Here is how I want you to handle it"?

12 MS. KAPLAN: I am fairly confident, your Honor, that  
13 the investigation that was done in this case, we interviewed a  
14 lot of witnesses, close to 100 witnesses, and I don't think we  
15 are going to find anyone else, that there's going to be anyone  
16 else. There are no other facts, I don't believe, that are  
17 going to come before you, your Honor. I think that, as  
18 Mr. Goldstein said, what we've said is what there is. I am not  
19 sure that holds true for the other defendants, but I am fairly  
20 confident and feel like, if there was more, that we would not  
21 be before you today recommending a sentence of probation.

22 THE COURT: All right. Anything further?

23 Mr. Goldstein?

24 MR. GOLDSTEIN: Thank you, your Honor. I don't think  
25 it's necessary to get so granular about, unless the Court wants

1 me to, in terms of what the Collective Bargaining Agreement  
2 permits, doesn't permit and what those facts were. There is a  
3 small discrepancy between the defense and the Government in  
4 terms of the what the intentions were on the night before. It  
5 was Mr. O'Brien who emailed the Collective Bargaining Agreement  
6 to the line producer, and according to the Government it was  
7 Mr. O'Brien who the next morning left a voicemail message  
8 saying, "We know you're at Steel & Rye and we're sending 50  
9 guys there to picket," and it's also the defense's  
10 understanding that Mr. Harrington could authorize a picket.

11 But I don't think any of that really, in my  
12 estimation, is why I am asking the Court to accept the proposed  
13 recommendation of the parties. I'm asking the Court to  
14 consider that recommendation as a fair and just resolution of  
15 this case, because I do think it meets the goals, the  
16 sentencing goals that are set forth in the overriding or the  
17 guiding statute, which, of course, is 3553(a).

18 I do think it meets the goal of specific deterrence.  
19 You heard Ms. Kaplan say that Mr. Harrington will be precluded  
20 from any union officer position. Mr. Harrington has already  
21 voluntarily left the union. He did so fairly shortly after he  
22 was indicted in this case. He has no prior convictions, your  
23 Honor. There are two entries on his record which are detailed  
24 in the Presentence Report, both of which I understand to be  
25 union-related disorderly conduct kind of cases. Him now

1 removed from any union activities or employment I think  
2 reduces, if not eliminates, any risk of recidivism here.

3 So, I think in terms of specific deterrence, I don't  
4 think there's any real risk of, real risk of Mr. Harrington  
5 appearing before the Court.

6 In terms of general deterrence, your Honor, this case  
7 has received extensive coverage by the press. Just in the last  
8 week there have been, I think -- there have been two articles  
9 in the *Boston Herald*, if not front-page articles, featuring  
10 Mr. Harrington. It was covered at length by the *Boston Globe*.  
11 It was covered at length by the television press. And so, the  
12 message that the Government takes these cases very seriously  
13 has been sent to the community at large.

14 THE COURT: Well, the question for general deterrence,  
15 which is the one that I think is most salient for me now, is  
16 not merely has someone been held up to shame and ridicule, that  
17 sort of thing. That happens in every case. The question is  
18 whether or not some greater depravation of liberty than 2 years  
19 of probation and 6 months of home confinement is a proper way  
20 to calibrate that portion, that is, the incarcerative or  
21 liberty-depravation portion, of the sentence. Six months' home  
22 confinement is relatively modest. I am sure those who have not  
23 experienced it would think it is meaningless, but it is not, it  
24 is a serious depravation, and being supervised by probation is  
25 an interference with someone's life under any circumstances.

1       But the question is, is that enough? And that is addressed to  
2 other persons similarly situated to Mr. Harrington who might be  
3 encouraged to take more proactive approaches to union members  
4 who are engaged in conduct around him that would cause people  
5 to say, "It is not worth the benefit of participating in this  
6 way, because the costs are too great." That is what it is  
7 about. So, maybe you want to speak more specifically to that.

8                    MR. GOLDSTEIN: Sure. Well, I do think that someone  
9 paying attention to this case would already say that the costs  
10 are too great, your Honor. You've heard Ms. Kaplan say that  
11 he's lost his lifetime employment with the union. It was a  
12 mission in his life, as you have seen in the letters that  
13 accompanied the Sentencing Memorandum. Of course,  
14 incarceration is one element of punishment, but it's not the  
15 only means to punish, and the Supreme Court has said that  
16 probation itself is a significant form of punishment.

17                    But I think that the sentence of 2 years' probation,  
18 if you are looking at someone similarly situated to  
19 Mr. Harrington in either the general community or the union  
20 community, I think that the message does get through to them,  
21 your Honor, that they need to act in a different way as a  
22 result of all that's happened to Mr. Mr. Harrington, as a  
23 result of this prosecution.

24                    And I think 2 years' probation is not a light  
25 sentence. I know that perhaps people talk about probation as

1 being some lenient form of punishment. It is not a lenient  
2 form of punishment. I mean, I have clients who have undergone  
3 years of probation, and 6 months of home confinement is not a  
4 necessarily light punishment, but there are other features of  
5 this case that would deter someone in the general community and  
6 the union community, in particular, part of which is, yes, your  
7 Honor, present in a lot of the cases in terms of the shame and  
8 the publicity, but there's also his excommunication from the  
9 union, which I think is a significant component of the  
10 punishment in this case, your Honor.

11 And so, in terms of general deterrence, I do think  
12 that the sentence recommended by the parties does adequately  
13 meet that particular goal of sentencing.

14 And that dovetails in terms of the punishment  
15 argument. I think that Mr. Harrington has been and will  
16 continue to be significantly punished as a result of his role  
17 in this case.

18 And it was a lesser role, your Honor. I think  
19 Ms. Kaplan has articulated the reasons why Mr. Harrington is  
20 different from the other defendants, and I think that also  
21 goes, going back to general deterrence, the Court -- if there  
22 are other convictions in this case there will be other  
23 sentences in this case, and the Court's sentence has to or  
24 should, I think, reflect individual roles and the role that  
25 they played in the particular criminal event.

1                   And the sentence that is advocated by the parties in  
2 this case, your Honor, I think fairly reflects Mr. Harrington's  
3 role in this case as well as his life arc, you know, something  
4 that we set out in our papers to the Court. Mr. Harrington is  
5 an entirely self-made individual. He overcame -- the Court  
6 sees a lot of challenging backgrounds of people. He did face  
7 some adversity in terms of his childhood and overcame them, put  
8 himself through college, became gainfully employed, became part  
9 of the Teamsters, became part of the union, and rose to a  
10 level, fairly significant level, within the Teamsters, the  
11 union, and I think all of that speaks to who Mr. Harrington  
12 really is, your Honor. And he said in his letter to the Court  
13 that his involvement in this case he doesn't think is  
14 reflective of his true character. And I would simply ask the  
15 Court to consider that a lifetime, 62 years, of really making  
16 all of the right decisions I think count for something at this  
17 defining moment in his life, and I think it can be a basis for  
18 this Court to exercise some level of compassion and discretion  
19 and accept the proposed recommendation of the parties.

20                   And so, unless the Court has particular questions in  
21 terms of the sentencing presentation --

22                   THE COURT: No. The only other one that, obviously, I  
23 have to touch on is disparity with other sentences, and they  
24 seem to be fairly fact-bound, enough so that I would feel a  
25 little uncomfortable saying, "This one equates to that one,"

1 unless you have ones that you want to press on me.

2 MR. GOLDSTEIN: No, your Honor. I brought the  
3 Deamicis case to the Court's attention because I knew it was  
4 out there, and I defer to Ms. Kaplan, because it was her case.  
5 I don't know very much about the facts of that particular case,  
6 although I did know that that particular defendant, I witnessed  
7 some testimony in that case where there was testimony regarding  
8 him demanding personal payoffs in exchange for him kind of  
9 going away and stopping his approaches to that particular  
10 victim. But Ms. Kaplan is in a far better position than I am  
11 in terms of opining about similarities or distinctions between  
12 this case and that case.

13 THE COURT: All right. Thank you. I have the letter  
14 from Mr. Harrington.

15 But if there is something further that you want to  
16 say, Mr. Harrington, I will hear you now.

17 THE DEFENDANT: Thank you, your Honor. I just want to  
18 say that, you know, I'm sorry for my action on that day. It's  
19 really been a very difficult time for myself and my family. I  
20 have dedicated my whole life to the union and my family, as you  
21 see, and I just would ask you for your consideration in this  
22 matter. As they say, as Ms. Kaplan has said and Mr. Goldstein  
23 has said, it is what I love to do I can no longer do, and  
24 that's a sentence I'm going to have to live with for the rest  
25 of my life, because I loved working for the union. I loved

1 helping people. I mean, as you saw in my letters, I thrived on  
2 raising money for people, putting people's kids through  
3 college, something I did on my own. I just worked my whole  
4 life for people, trying to help people, and that's all I ever  
5 wanted to do, and that sentence alone is a life sentence.

6 Thank you, your Honor.

7 THE COURT: Thank you, Mr. Harrington.

8 Well, as I said at the outset, I wanted to set the  
9 terms of engagement so that the parties knew what they needed  
10 to do to persuade me here, and, having listened carefully, I am  
11 persuaded that this is within the realm of reasonable sentences  
12 that can be imposed and one in which I can, consistent with my  
13 responsibilities, put my signature to the judgment, and so I  
14 will. It is important for me to explain in greater detail why  
15 I do that, because it is a departure, one that is accepted by  
16 both parties here, and it is a substantial departure.

17 I share the view that, it was expressed more  
18 particularly in the Deamicis case by Judge Casper, the  
19 guidelines here capture a range of activity that is broader  
20 than the guideline itself. I am still satisfied that the  
21 guideline chosen by the Probation Office was the accurate one.  
22 There was violence in the air, but it is sometimes the case  
23 that that is true of virtually every picketing circumstance,  
24 job-action circumstance.

25 There is an issue that is raised about the

1 responsibility of someone who is a union leader to lead and  
2 take affirmative action when confronted with union members who  
3 are engaged in misconduct. But this is a fast-moving,  
4 fast-developing set of circumstances, and my view, which is  
5 informed by the greater familiarity on the part of the parties  
6 with the evidence that led them to this agreement, is that  
7 there was a substantially different role in the offense for  
8 Mr. Harrington.

9           But going through the 3553 factors, I do think this is  
10 a fundamentally serious matter, serious crime. This is  
11 concerted action. My own view is that there would need to be a  
12 bit more evidence of Mr. Harrington's affirmative acceptance of  
13 what it was that the other individuals are alleged to have done  
14 to make him fully culpable, but it is critical to effectively  
15 implementing our National Labor Policy that we are able to draw  
16 lines. The lines are clearest with violence, less clear or  
17 less defined with threat of economic harm, because what, of  
18 course, is a job action but threat of economic harm. But there  
19 are rules, they ought to be complied with, and those rules are  
20 defined in various ways by various agencies from the NLRB to  
21 State Courts to Federal Courts in Hobbs Act matters, and the  
22 short of it is this is a serious crime. But it is a serious  
23 crime that can be committed in a variety of different ways with  
24 a variety of different forms of activity, and I am satisfied,  
25 as I said, that here I am on firm ground in accepting the

1 parties' judgments that this is a case in which  
2 Mr. Harrington's involvement may be characterized as less  
3 significant than others.

4 I turn to the nature and circumstances of the  
5 defendant's life, because those are things that have to be  
6 taken into consideration under 3553. My view is that  
7 Mr. Goldstein and Mr. Harrington have accurately described it.  
8 This is someone who spent his life in an area in which he  
9 thought he was providing support to working people through the  
10 union. There is no prior activity that would justify saying  
11 that he spent his life with chalk on his shoes from playing it  
12 close to the line. It appears that he attempted to conduct his  
13 union life the way it should be conducted.

14 Now, frequently labor disputes are highly contested,  
15 but that is only part of what someone does as a labor leader,  
16 and Mr. Harrington, it is clear from the letters, was engaged  
17 in the kind of productive stuff that unions are supposed to do  
18 and union leaders are supposed to do. Effective here was the  
19 statement of one of the letters that he advised his people that  
20 you do not have a union unless you have got a company, and you  
21 have got a responsibility to make sure that the industry itself  
22 can support good jobs for hardworking people, and that he found  
23 ways and welcomed ways and independently chose ways to support  
24 people. That is to the good. It is not why we are here, but  
25 it is to the good, and it is something that I consider in this

1 connection in deciding that I will accept the parties'  
2 agreement.

3 The question of specific deterrence, which is, will  
4 Mr. Harrington ever do this again, well, in some ways the  
5 answer is provided by the circumstances themselves. No,  
6 because of the bar and related kinds of problems. If he were  
7 to be active again in this area I suspect that he would be even  
8 more careful and understand that there is some responsibility  
9 affirmatively to interfere with misconduct, even the misconduct  
10 taking place over a one-day period, effectively.

11 I said general deterrence was the hardest part, and it  
12 is. The reason that there is a bar in the statutes is that  
13 Congress was not satisfied with the Hobbs Act; they wanted to  
14 find other ways to keep union officials from engaging in  
15 misconduct. It is the reason that, whether it is a resignation  
16 or a forced retirement, Mr. Harrington is no longer working for  
17 the union, because union officials are supposed to conduct  
18 themselves in a particular way, and there are consequences for  
19 doing it, and the question is whether or not there should be  
20 greater consequences through the criminal law in the form of  
21 incarceration.

22 Given the particulars of this case involving  
23 Mr. Harrington and the wide range of activities that are  
24 involved in Mr. Harrington's lesser role at really the low end  
25 of this, it seems to me that properly calibrating a sentence

1 does not require prison, it does not require community  
2 confinement; that home confinement for a period of time,  
3 coupled with probation under these circumstances, reaches the  
4 goal that is necessary to provide specific deterrence in the  
5 larger context.

6 Now, would sending someone away for a very long time  
7 be greater general deterrence? I suppose so, but that is not  
8 what the *Sentencing Guidelines* provide. That is not the role  
9 of sentencing. It is not supposed to over-deter. It is  
10 supposed to be sufficient but not more than necessary to serve  
11 this purpose, and I am satisfied that home confinement in this  
12 probation context in this case serves even general deterrence,  
13 although that is the hardest one for me.

14 I look at the question of whether or not there is some  
15 role for prison to provide. The role for prison to provide  
16 under these circumstances is to impose on the taxpayers of the  
17 United States the costs of confining someone for whom  
18 confinement seems to me to be inappropriate, so I rule that out  
19 as a consideration.

20 I am concerned about disparity, unwarranted disparity,  
21 but here there were different roles; and, in fact, looking at  
22 all of the cases there are different roles, and trying to apply  
23 an understanding of the nature of employment disputes  
24 recognizes a variety of different roles. I do not think this  
25 is a disparity that could be called unwarranted. It, I think,

1 is a fair resolution, accommodation of the disparate interests  
2 of the Government and the defendant, and, as I said at the  
3 outset, I have an independent responsibility. I have listened  
4 as carefully as I can to this, and I have been persuaded that  
5 the parties have reached an accommodation that I can reasonably  
6 endorse by entering judgment on the lines that have been  
7 provided by the parties.

8 So, let me turn, then, to the sentence specifically,  
9 having set forth the reasons why I am prepared to accept the  
10 (C) plea.

11 First, as I have said, the defendant is sentenced to a  
12 period of probation for 2 years, that is to include a 6-month  
13 period of home confinement at the outset, a fine of \$10,000.  
14 There is a mandatory Special Assessment of \$100, and the  
15 restitution is in the amount that is identified here by  
16 Probation.

17 I understand there is some dispute about that  
18 restitutionary amount here. I am satisfied that it fairly  
19 captures the kind of loss that is subject to restitution. That  
20 is \$24,023.95 directed, as the Presentence Report indicates, to  
21 the victims of the crime here. I have to say that I will make  
22 that joint and several here, because there are other persons  
23 who may be responsible for it. Right now the only person who  
24 is responsible is Mr. Harrington. It may be that at the  
25 conclusion of the trial there will be other persons who are

1 responsible, but he is not the only person responsible,  
2 according to the Government's theory of the case.

3 What that means is this: that Mr. Harrington is  
4 responsible to make payments immediately, that if he does not,  
5 that there will be a payment plan that will be established for  
6 him; that so long as payment is not fully paid he will be  
7 subject to supervision that requires him to provide the  
8 Probation Office with access to any requested financial  
9 information, and that can be shared with the Financial  
10 Litigation Unit of the United States Attorney's Office. He is  
11 prohibited from incurring any new credit charges or opening  
12 additional lines of credit without the approval of the  
13 Probation Office while any of the financial obligations are  
14 outstanding.

15 The defendant has as a special condition one that I  
16 always impose, the prohibition from possessing a firearm or  
17 other dangerous weapon.

18 While he is serving the 6 months of home detention he  
19 must provide for and pay for himself the location-monitoring  
20 equipment as determined under the national contract that  
21 Probation has, and he is responsible for returning that  
22 monitoring equipment in good condition and may be charged for  
23 replacement or repair of the equipment.

24 There are mandatory conditions as well: The defendant  
25 is obligated not to commit another federal, state or local

1       crime. He may not possess illegally a controlled substance.  
2       This is not a case in which drugs seem to me to be involved  
3       and, as a consequence, I am going to suspend the drug-testing  
4       requirements because, from all that appears, the defendant  
5       poses a low risk of future substance abuse. He is, however,  
6       obligated to provide a DNA sample, as directed by the Probation  
7       Office, and he is obligated to comply with the standard  
8       conditions of supervision that are described in the *Sentencing*  
9       *Guidelines* at Section 5D1.3C.

10           Now, are there any other conditions that the parties  
11       would ask me to consider?

12           MR. GOLDSTEIN: In terms of the home confinement, your  
13       Honor, I have spoken to Probation about permitting  
14       Mr. Harrington to leave the residence for limited reasons,  
15       medical appointments, to attend church service, to work to the  
16       extent that he can gain some kind of employment, and then also  
17       four times a week for 1 1/2 hours a day to go to the gym. I  
18       think the Court has seen the medical history. It's important  
19       to Mr. Harrington that he actually continue with his exercise  
20       regimen.

21           THE COURT: Any objections from the Government?

22           MS. KAPLAN: No, your Honor.

23           THE COURT: And, Probation, any objections?

24           THE PROBATION OFFICER: No, your Honor. Thank you.

25           THE COURT: So, I will incorporate those conditions.

1       But the one that gives me the most pause is work. That is not  
2 open-textured. It is something that Probation is going to have  
3 to approve, and it is not just a get-out-the-door opportunity.  
4 My expectation is that "home confinement" means being confined  
5 at home, not confined from religious services, not confined  
6 from medical services, not confined from the opportunity to  
7 engage in exercise that is necessary for his particular  
8 condition, but it is confinement, and it will be supervised  
9 effectively by Probation, and to the degree there are disputes  
10 they will be brought to me to be resolved.

11           Now, are there any other matters that we need to take  
12 up?

13           MS. KAPLAN: The Government would move, your Honor, to  
14 dismiss Count One of the Superseding Indictment.

15           THE COURT: Right. And you will submit a --

16           MS. KAPLAN: We will submit a motion.

17           THE COURT: -- in that regard.

18           One further point, Mr. Harrington. In this session,  
19 anyway, you have a right of appeal. You will want to discuss  
20 with Mr. Goldstein whether that makes any sense under these  
21 circumstances.

22           I think I have tried to outline what the concerns are  
23 here, and I do not mean to go on much further. You recognize  
24 that this was not something that you want to hold out as an  
25 example of your life here in so many ways, but you have to pay

1 a price for having been involved in that. This seems to me to  
2 be a fair price for that and a reflection of all the other  
3 things that you have done as a union leader that have mitigated  
4 what otherwise would have been a rather severe price for this  
5 activity.

6 If there is nothing further, then we will be in  
7 recess.

8 MR. GOLDSTEIN: Thank you, your Honor.

9 THE CLERK: All rise.

10 (The Honorable Court exited the courtroom at 3:25 p.m.)

11 (WHEREUPON, the proceedings adjourned at 3:25 p.m.)

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## C E R T I F I C A T E

4 I, Brenda K. Hancock, RMR, CRR and Official Court  
5 Reporter of the United States District Court, do hereby certify  
6 that the foregoing transcript constitutes, to the best of my  
7 skill and ability, a true and accurate transcription of my  
8 stenotype notes taken in the matter of *United States v. Mark*  
9 *Harrington*, No. 1:15-cr-10300-5-DPW.

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Date: 3/23/17

/s/ Brenda K. Hancock  
Brenda K. Hancock, RMR, CRR  
Official Court Reporter